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In The
Supreme Court Of The United States
October Term, 1983.

April Thompson, Administratrix of
the Estate of Doyle Wayne Thompson,
Deceased,

Petitioner.

vs.

International Harvester Company, a
corporation and The Goodyear Tire
& Rubber Company, a corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Did the court below erroneously interpret the controlling decision of the Supreme Court of Illinois governing choice of law in multi-state tort litigation as adopting the entire approach of the Restatement of The Laws, Second, Conflicts of Laws to the resolution of choice of law questions rather than applying the "significant relationships" test independently to the issue of whether the Michigan, Illinois or Indiana Wrongful Death Act was applicable?

2. In a Wrongful Death action predicated on a theory of strict liability for a defective tire which was sold in Michigan and involving a Michigan decedent who was a resident of that State during his lifetime, Michigan estate beneficiaries who are

residents of Michigan, and defendants who are multi-state corporations licensed to do business in Michigan, would an Illinois court apply the Michigan Wrongful Death Act, including its limitation period, rather than that of Indiana, the place where the injury occurred, or Illinois, the forum?

3. To the extent that the Restatement of The Laws, Second, Conflicts of Laws principles are applicable in their entirety, did the court below err by failing to apply Sections 143 and 175 of the Restatement?

4. Did the court below err in applying the Illinois, rather than the Michigan, limitation period for wrongful death actions where Illinois views such limitation periods as barring the right and not merely the remedy?

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- I. Rather than adopting the entire Restatement of Conflicts, The Illinois Supreme Court, in Ingersoll, intended that Illinois courts should decide on the facts of each case which state had the most significant contacts with the case with respect to the particular issue concerning which a choice of laws existed.

- II. Even assuming that Ingersoll adopted the entire Restatement approach to choice of law in tort actions, the opinion below erroneously applies the Restatement as a result of ignoring Section 175 and concluding that Section 143 is not applicable.

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In The
SUPREME COURT OF THE UNITED STATES

October Term, 1983

NO.

APRIL THOMPSON, Administratrix of the
Estate of DOYLE WAYNE THOMPSON, Deceased,

Petitioner

-vs-

INTERNATIONAL HARVESTER COMPANY, a
corporation and THE GOODYEAR TIRE
& RUBBER COMPANY, a corporation,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT

Petitioner, April Thompson, as
Administatrix of the Estate of Doyle
Wayne Thompson, Deceased, respectfully
prays that a writ of certiorari issue to

review the judgment and order of the United States Court of Appeals for the Seventh Circuit in this case.

This action was commenced in the United States District Court for the Northern District of Illinois to recover, under the Michigan Wrongful Death Act (Mich. Stats. Ann., Sec. 27A.2922) for the wrongful death of petitioner's husband. That Court, concluding that either the law of the forum, Illinois, or the law of the place where decedent expired, Indiana, should be applied rather than the law of Michigan, dismissed the action. On appeal, the Court of Appeals, concluding that the law of the forum applied by virtue of the fact that Illinois would apply Section 142 of the Restatement of Conflicts of Laws, 2D to the situation, affirmed the decision of the District Court, holding that Illinois law

was applicable so that the wrongful death action for the benefit of the petitioner was barred, but that the wrongful death action for the benefit of the minor child of the decedent was not barred.

OPINIONS BELOW

The District Court filed a Memorandum Opinion which is not published. The Court of Appeals disposed of the cause in an unpublished order pursuant to its Rule 35. Both opinions are reproduced in the Appendix to this Petition.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on February 28, 1983. Rehearing was denied on August 31, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATUTES INVOLVED

The pertinent portions of the Wrongful Death Acts of the three States involved are set forth verbatim at this point.

ILL. REV. STATS. (1981) C. 70, Par. 1;

"Whenever the death of a person shall be caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who or company or corporation which would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony."

ILL. REV. STATS. (1981) C. 70, Par. 2;

"Every such action shall be brought by and in the names of the personal representatives of such deceased person, and, except as otherwise hereinafter provided, the amount recovered in every such action shall be for the exclusive benefit of the surviving spouse and next of kin of such deceased person and in every such action the jury may give such damages as they shall deem a fair and just compensation with reference to the pecuniary injuries resulting from such death, to the surviving spouse and next of kin of such deceased person."

★ ★ ★ ★ ★

"Every such action shall be commenced within 2 years after the death of such person but an action against a defendant arising from a crime committed by the defendant in whose name in escrow account was established under the "Criminal Victims' Escrow Account Act" shall be commenced within 2 years after the establishment of such account. For the purposes of this Section 2, next of kin includes an adopting parent and an adopted child, and they shall be treated as a natural parent and a natural child, respectively. However, if a person entitled to recover benefits under this Act, is, at the time the cause of action accrued, within the age of 18 years, he or she may cause such action to be brought within 2 years after attainment of the age of 18."

IND. STATS., ANN. (Burns) Sec. 34-1-1-2

"When the death of one is caused by the wrongful act or omission of another, the personal representative of the former may maintain an action therefor against the latter, if the former might have maintained an action had he or hse as the case may be, lived, against the latter for an injury for the same act or omission. When the death of one is caused by the wrongful act or omission of another, the action shall be commenced by the personal representative of the decedent within two (2) years, and the damages shall be in such an amount as may be determined by the court or jury, including, but not limited to, reasonable medical,

hospital, funeral and burial expenses, and lost earnings of such deceased person resulting from said wrongful act or omission."

MICH. STATS. ANN. Sec. 27A.2922

"Every such action shall be brought by, and in the names of, the personal representatives of such deceased person, and every such action the court or jury may give such damages, as, the court or jury, shall deem fair and just, to those persons who may be entitled to such damages when recovered damages for the reasonable medical, hospital, funeral and burial expenses for which the estate is liable and reasonable compensation for the pain and suffering, while conscious, undergone by such deceased person during the period intervening between the time of the inflicting of such injuries and his death."

MICH. STATS. ANN. Sec. 27A.5805

"No person may bring or maintain any action to recover damages for injuries to persons or property unless, after the claim first occurred to himself or to someone through whom he claims, he commences the action within the period of time prescribed by this section."

* * * * *

"(7) The period of limitations is 3 years for all other actions to recover damages for injuries to persons and property."

STATEMENT OF THE CASE

The decedent, Doyle Wayne Thompson, together with his wife, the petitioner, and his minor child, Summar Marie Thompson, resided and were domiciled in Michigan at all times material to this action. The respondents, Goodyear Tire & Rubber Company and International Harvester Company are both multi-state corporations, being licensed to do business, and transacting business, in both Michigan and Illinois. (Goodyear is an Ohio corporation, and International Harvester has its principal place of business in Illinois).

On January 25, 1978, the decedent was driving a truck built by International Harvester and equipped with tires made by Goodyear. While he was driving through Indiana, one of the Goodyear tires blew out, causing him to strike a guard rail. As a

result of that collision, the steel coils which he was hauling came loose and struck the decedent, severing his body into four separate parts and causing his immediate death. The tire which blew out was sold in Michigan.

Decedent's wife and child continued to reside in Michigan. The letters of administration pursuant to which his wife brings this action were issued by the Probate Court of Van Buren County, Michigan, where the estate is presently pending.

This action was commenced in the United States District Court for the Northern District of Illinois, Eastern Division, more than two, but less than three, years after the date of decedent's death. Federal jurisdiction was predicated on the ground of diversity of citizenship, 28 U.S.C. Sec. 1332. The Illinois Wrongful Death Act

(Ill. Rev. Stats. (1981) S. 70 Pars. 1-2) and the Indiana Act, (Ind. Stats. Ann. (Burns) Sec. 34-1-1-2), both contain provisions requiring that such actions be brought within two years of the date of death except, in the Illinois Act, in the case of an action for the use and benefit of a minor. The Michigan Act (Mich. Stats. Ann., Sec. 27A.2922) is subject to a commencement period of three years from the date of death of the decedent (Mich. Stats. Ann., Sec. 27A.5805). The action was timely if the Michigan Wrongful Death Act governed but untimely if either the Illinois, or Indiana, Act was applicable. The parties and the courts below agreed that, under this Court's decision in Klaxon Company v. Stentor, 313 U.S. 487 (1941), this question should be determined by applying the choice of law principles of the forum state,

Illinois. The dispute arises over which Act Illinois would apply in these circumstances.

REASONS FOR GRANTING THE WRIT

A potential "choice of law" question is implicit in every tort action filed in the Federal courts in which jurisdiction is based on diversity of citizenship. Under well-settled principles of law, the Federal courts are required to resolve these questions in the manner in which the courts of the State in which they are sitting would resolve it. In this case, the Court of Appeals misinterpreted the controlling state court decision, Ingersoll v. Klein, 46 Ill. 2d 42, 262 N.E. 2d 593 (1970), by failing to apply the "substantial contacts" test to the issue of which Wrongful Death Act was applicable, rather than to the whole case, and by gratuitously assuming that Ingersoll adopted the Restatement of Conflicts of Law, 2D, in its entirety, rather than

merely adopting Section 145 of the Restatement. Operating on this premise, the writ below then proceeded to consider Section 142 of the Restatement out of context to arrive at a result which is contrary that implicit in the entire Restatement approach to the question. The net result creates additional confusion in an important, but difficult, field of the law which is frequently involved in diversity cases as well as conflicts in principle with decisions of other panels of the same Court, various decisions of the District Court for the Northern District of Illinois, and the Illinois courts. These factors justify the exercise of certiorari justification by this Court before the view of Illinois choice of law principles and of the Restatement contained in the judgment .

sought to be reviewed is further
perpetuated.

I

RATHER THAN ADOPTING THE ENTIRE RESTATEMENT
OF CONFLICTS, THE ILLINOIS SUPREME COURT,
IN INGERSOLL, INTENDED THAT ILLINOIS COURTS
SHOULD DECIDE ON THE FACTS OF EACH CASE
WHICH STATE HAD THE MOST SIGNIFICANT
CONTACTS WITH THE CASE WITH RESPECT TO THE
PARTICULAR ISSUE CONCERNING WHICH A CHOICE
OF LAWS EXISTED.

The basic error in the Court of Appeals'
decision is reflected in its statement,
"The parties also agree that Illinois has
adopted the conflict of laws principles as
provided in the Restatement 2d. The
dispute in this case turns on which
section of the Restatement is applicable"
(App. p. 14a).

A careful reading of the Ingersoll opinion discloses that Ingersoll merely adopted the "significant contacts" rule of Section 145 of the Restatement for determining choice of law questions in tort cases with the proviso that the significant contacts question be resolved as to each issue concerning which a choice of law exists.

In Ingersoll, the choice of law was between two states, Illinois and Iowa, and the precise question was whether liability should be determined under Iowa law, which included certain statutes creating liability, or under Illinois law, which did not include similar statutes. The plaintiff was a resident of Illinois, the decedent had been an Illinois resident at the time of his death, the suit was brought in Illinois, and the defendants were Illinois residents.

Iowa's only connection with the occurrence was that the accident happened in a part of the Mississippi River which was within its territorial jurisdiction. At page 595 of the West Reporter, the Ingersoll Court enunciated its holding as follows:

"In our opinion, the local law of the State where the injury occurred should determine the rights and liabilities of the parties, unless Illinois has a more significant relationship with the occurrence and with the parties, in which case, the law of Illinois should apply."

The opinion then proceeds by evaluating and rejecting lex loci delicti as an automatically determinative principle. In so doing, it comments, at page 595 of the West Reporter:

"More particularly, as applied to torts, the theory ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues" (emphasis supplied).

When Ingersoll was decided, Tentative Draft No. 9 of the Restatement of the Law,

Second, Conflicts of Laws was the latest draft. Its Section 379, provided:

"The local law which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort."

Subsequently, Section 379 of Tentative Draft No. 9 was modified and incorporated in the final Restatement, Second as Section 145. The modified provision read:

"The rights and liability of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, as the most significant relationship to the occurrence and the parties under the principle stated in Section 6" (emphasis supplied).

The difference is that, under the text of Section 145, as finally adopted, issues receive separate consideration, and the choice of law is based on the significant contacts with respect to the particular issue involved, (See: Restatement of Law, Conflicts 2D, Comment "d", p.417).

In view of its reference to the "particular issue", the Ingersoll opinion clearly favors this approach to the choice of law problem. Since the Court of Appeals chose to adopt an automatic "law of the forum" approach, it never reached this question. The District Court, as manifest by its opinion, did, and as is apparent from its Memorandum Opinion (App. 1a et seq.), it erroneously assumed that, under Ingersoll, one choice of law had to be made for all issues. Thus, it concluded that the choice of law which would be appropriate to the issue of liability was more important than the choice of law that would be appropriate to the right to maintain a wrongful death action, not recognizing that implicit in Ingersoll is a rule which permits different choices of law for these two issues.

The Ingersoll opinion nowhere states that it adopts the entire Restatement approach to the choice of law problem. At page 596 of the West Reporter, it sets forth the provisions of Section 379 of Tentative Draft No. 9 which, as subsequently modified, became Section 145, only. It then concludes, at page 596 of the West Reporter:

"Realization of unjust and anomalous results which may ensue from an application of lex loci delicti leads us to believe that a "most significant contexts" rule best serves the interests of the State and the parties involved in a multi-state tort action."

Ingersoll then concludes that the resident factors in that case are more significant than the place of occurrence so that Illinois law would be applied.

The opinion of the District Court in Leschkies v. Playboy Club of Lake Geneva, Inc., 465 F. Supp. 80 (E.D. Ill., 1979)

confirms the foregoing construction of Ingersoll. At issue in that case was the applicability of a Wisconsin statute known as the "Safe Place Statute" as a basis for liability. At page 82 of the opinion, the court specifically interprets Ingersoll as adopting the Section 145 version, of the Restatement including the issue by issue analysis. Significantly, the Leschkies case was decided by Judge Nicholas J. Bua who, before his appointment to the Federal bench, was for many years a Justice of the Illinois Appellate Court and, before that, a trial court judge, assigned to hear motions in the Circuit Court of Cook County, one of the nation's major litigation centers. Thus, as to matters of Illinois law, Judge Bua's opinion has particular significance because of his expertise.

The Court of Appeals opinion, however, adopts the view that questions of limitations are always determined by the law of the forum. The two cases passing on this point under Illinois law, have concluded otherwise. Kalmich v. Bruno, 553 F.2d 549 (C.A. 7th, 1977) involved the question of whether, or not, a provision of a Yugoslavian statute with respect to the seizure of property during the war which provided that there should be no limitation on the commencement of actions there under would govern as opposed to the Illinois five year statute of limitations. (Significantly, the Yugoslavian statute was longer, not shorter, than that of Illinois). The court, following a "substantive" and "procedural" analysis, concluded that where, as is also true in the case of Wrongful Death Actions, the limitation

period in the statutorily created right effects the right, rather than only the remedy, the law of the forum was not controlling. Klondike Helicopters, Ltd. vs. Fairchild Hiller Corporation, 334 F. Supp. 890 (E.D. Ill., 1971), specifically applying Ingersoll, concludes, at page 894, that the Ingersoll test is the law of Illinois in ascertaining an applicable statute of limitations.

Manifestly, the Court of Appeals, in the instant case, has adopted a misinterpretation of Illinois law, as evidenced by Ingersoll, which is in specific conflict with its own decision in Kalmich and the District Court's decision in Klondike Helicopters and in conflict, in principle, with the interpretation of Ingersoll, adopted by Judge Bua in Leschkies. Such a result should not be perpetuated.

II

EVEN ASSUMING THAT INGERSOLL ADOPTED THE ENTIRE RESTATEMENT APPROACH TO CHOICE OF LAW IN TORT ACTIONS, THE OPINION BELOW ERRONEOUSLY APPLIES THE RESTATEMENT AS A RESULT OF IGNORING SECTION 175 AND CONCLUDING THAT SECTION 143 IS NOT APPLICABLE.

Although this case is governed by Ingersoll and it is clear that the opinion in that case did not adopt the entire Restatement approach, the opinion below is likewise erroneous under the Restatement since it ignores Section 175 of the Restatement and improperly concludes that Section 143 has no applicablity.

Section 175 of the Restatement 2D provides:

"In an action for wrongful death, the local law of the state where the injury occurs determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in Section 6 to the occurrence and the parties, in which event the local law of the other state will be applied."

"Comment 'd' Rationale" to this Section (p. 523 of the Restatement) points out that the applicability of the law of the place of injury, as opposed to some other law, will be determined by the question of whether some other state has a greater interest in the determination of the particular issue than the state where the injury occurred, indicating that this determination should be made under the provisions of Section 145 (2). Comments "e" and "f" to this Section 175 introduce a distinction based on the question of whether the conduct and the injury occur in the same, or different, states. Comment "f" (Restatement p. 524) states:

"When, however, the decedent was domiciled or resided or did business in the state where the conduct occurred, this state is more likely to be the state of most significant relationship and therefore the state of the applicable law with respect

to issues of which usually be determined by the local law of the state of injury. The same may be true when the injury occurred in the course of an activity or relationship which was centered in the state where the conduct occurred and where the decedent had no settled relationship to the state where the injury occurred.

"The state where the conduct occurred is even more likely to be the state of most significant relationship when these two elements are combined, that is to say, when, in addition to the decedent's having been domiciled or having resided or having done business in the state, the injury occurred in the course of an activity or of a relationship which was centered there."

Under this view, Michigan would be the proper law to apply in determining the availability of a Wrongful Death Action since the theory of the action is products liability for the sale of an unreasonably dangerous tire. The sale of the tire took place in Michigan, and the decedent was domiciled in Michigan. Thus, the conduct, as opposed to the fortuitous location in which the injury occurred, took place in Michigan.

"Comment 'g' Statute of Limitations," refers to both Sections 142 and 143, stating that the time for bringing the action is determined by the state of the applicable law.

Section 143, which the Court of Appeals rejects, provides:

"An action will not be entertained in another state if it is barred in the state of the otherwise applicable law by a statute of limitations which bars the right and not merely the remedy."

"Comment 'b'" to Section 143 states that the question of whether the statute bars the right, or merely the remedy, is determined by the law of the forum, and, in Illinois the limitations provisions attached to Wrongful Death Actions are regarded as unbarring the right, not merely the remedy, Wilson v. Tromby, 404 Ill. 307, 89 N.E. 2d 22 (1949) and

Kristan v. Belmont Community Hospital, 51 Ill. App. 3d 523, 366 N.E. 2d 1068 (1977). Thus, the state of "otherwise" applicable law is determined under the "significant context" rule of Section 145, pursuant to the requirements of Section 175.

Section 143, however, is phrased in terms of actions which are barred by a statute of limitations in the state of otherwise applicable law.

The converse rule is supported by substantial case law, Theroux v. Northern Pac. R. Co., 64 Fed. 84 (C.A. 8th, 1894); Collins v. Clayton & Lambert Manufacturing Co., 299 F. 2d 362 (C.A. 6th, 1962); Brunswick Terminal Co. v. National Bank of Baltimore, 99 Fed. 635 (C.A. 4th, 1900) cert. den. 178 U.S. 611; Neghaubauer v.

Great Northern Ry. Co., 92 Minn. 184, 99 N.W. 620 (1904), and Norman v. Baldwin, 152 Va. 800, 148 S.E. 831 (1929). In Engel v. Davenport, 271 U.S. 33 (1926), this Court held that where the period fixed in the federal statute for its enforcement was part of the right created by the statute a shorter State statute of limitations could not be applied, even in an action in a State court. This, in part, reflects the same principle.

Under the foregoing analysis, it is clear that if the "significant context" test results in a determination under Section 175 that Michigan has a more significant relationship with respect to a Wrongful Death Action than, Indiana, or Illinois, which, as has previously been shown, it does, then, under the Restatement, the Michigan Act would be

applicable. Thus, the opinion in the instant case, in addition, to misconstrueing Ingersoll, also distorts the provisions of Restatement of The Laws Second, Conflicts, which are universally regarded as a guide in solving choice of law problems.

CONCLUSION

Although, in its recent revisions of its Rule 17, this Court has deleted instances in which a court of appeals has decided a question of state law in conflict with the applicable decisions of a state court as, by itself, being a reason which will be persuasive to this Court in exercising its certiorari jurisdiction, this case transcends that basis for invoking this Court's discretionary jurisdiction. In addition to the direct conflict with the Klomich and

Leschkies decisions, previously mentioned, there is a conflict in principle between the opinion of this court in the instant case and this courts decisions in Pittway Corp. v. Lockheed Aircraft, Corp., 641 F. 2d 254 (C.A. 7th, 1981) and In Re Air Crash Disaster at Chicago, Ill., 644 F. 2d 549 (C.A. 7th, 1981), both of which recognize that Illinois applies the significant relationships test in determining choice of law questions. Moreover, by its holding that Ingersoll adopts the entire Restatement position and its failure to consider the applicable sections of the Restatement, the court below has beclouded a fundamental question of general jurisprudence. This is particularly significant in a Federal court in that the possibility of choice of law questions

arising is much greater than in a state court every diversity case, choice of law questions are implicit in the jurisdictional basis.

Moreover, the field of conflicts of law is difficult. The Restatement is one of the most widely used guides in solving conflicts problems. The court below's failure to take cognizance of Section 175 and to properly construe Section 143 impairs its usefulness for that purpose.

For the above and foregoing reasons, this Court should grant certiorari in this cause, and, upon full hearing, reverse the court below and remand the cause with directions to apply the Michigan Wrongful Death Act or, in the alternative to determine the

question of the choice of wrongful
death law under the "significant
context" test.

Respectfully submitted,

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APPENDIX

In the United States District Court
Eastern Division

APRIL THOMPSON,)
)
Plaintiff,)
)
vs.) No. 81 C 228
)
INTERNATIONAL HARVESTER)
CO. AND THE GOODYEAR TIRE)
& RUBBER CO.,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

I have before me a motion to dismiss this action on the ground that the statute of limitation under Illinois law, that of the forum state, under Indiana law, that of the place in which the cause of action arose, have both expired, and the law of Michigan, which has not expired is inapplicable to this case. Plaintiff is one April Thompson, the administratrix of the estate of Doyle Wayne Thompson, her deceased husband. She and the dependent children

of their marriage are citizens of the State of Michigan. The two defendants are International Harvester Company, a Delaware corporation with its principal place of business in Illinois, and The Goodyear Tire and Rubber Co. ("Goodyear"), an Ohio corporation with its principal place of business in Ohio but licnesed to do business in Illinois. Both defendants are licensed to do business in Michigan. Goodyear, by itself, moves for dismissal.

This is a wrongful death action. Plaintiff's decedent was driving a truck, made by International Harvester Company, when its left front tire, made by Goodyear, blew out causing the truck to hit a guard rail and the decedent to be thrown from the cab of the truck. The decedent was mortally wounded by flying unravelling coils of steel which the truck had been carrying. The coils of steel cut him into four pieces.

He died immediately. The accident occurred in Indiana while the decedent was on the return part of a round trip from Michigan to Illinois to Michigan.1/

The threshold issue presented by this cause is one of conflicts of laws between the wrongful death statutes of Illinois, Indiana, and Michigan.2/ The wrongful death statutes of Illinois and Indiana both require the decedent's administrative representative to institute suit within two years of the death. The wrongful death statute of Michigan requires the suit to be brought within three years.

1/ It is to be noted that Van Buren County in Michigan in which the decedent and his family resided is part of the toe of Michigan which stands on top of Indiana's northern boundary just east of the Illinois-Indiana line - all within 90 miles of this court.

2/ Ill.Rev.Stat. ch. 70, Sec. 2; Ind.Code Ann. Sec. 34-1-1-2 (Burns); Mich.Stat. Ann. Sec. 27A 2922

Under Erie R. Co. v. Tompkins, 304 U.S. 64 (1938), I must look to the substantive law of the state of this district. The substantive law of Illinois on the choice of law in this interstate type of accident is found in the Illinois Supreme Court case of Ingersoll v. Klein, 46 Ill. 2d 42, 262 N.E. 2d 593 (1970). In the Ingersoll case the Illinois Supreme Court adopted the "most significant contact rule" as the standard by which to choose the applicable law between two or more states with interests in the same cause of action. This rule has replaced the anachronistic lex loci delicti rule. Under the new rule, "the local law of the state where the injury occurred should determine the rights and liabilities of the parties unless Illinois has a more significant relationship with the occurrence and with the parties, in which case the law of

Illinois should apply." Milton v. Britton, 19 Ill. App. 3d 922, 931, 313 N.E. 2d 303 (1974). The Ingersoll court used American Law Institute Tentative Draft No. 9 of Section 379, Restatement of the Law, Second, Conflicts of Laws, as one of its authorities to urge "that there are many other choice-influencing considerations than the predictability of results (of the lex loci delicti rule).) 262 N.E. 2d at 596. The Restatement of the Law says that:

- (1) The local law which has the significant relationship with the occurrence and with the parties determines their rights and liabilities in tort.
- (2) Important contacts that the court will consider in determining the state of the most significant relationship include:
 - (a) The place where the injury occurred.
 - (b) The place where the conduct occurred.
 - (c) The domicile, nationality, place of incorporation and place of business of the parties.

(d) The place where the relationship of the parties is centered.

(3) In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort issues of the interested states.

Plaintiff sets forth several reasons why Michigan would be the state with the most significant contacts for the purposes of choice of law: 1) "Illinois is simply the forum state and the state in which the defendant corporations maintain registered agents and do business;" 2) "(T)he only contact which Indiana has with the parties in the occurrence is the fortuitous circumstance of that state being the situs of the place of the occurrence;" 3) "(Decedent and his survivors) were domiciliaries and residents of the State of Michigan at the time of the death of the decedent, and (his survivors) have remained residents of the State of Michigan since that date;" 4) "(T)he Estate of the decedent

Doyle Wayne Thompson, is being administered in the State of Michigan;" 5) "The State of Michigan has an interest in providing for compensation of heirs of deceased persons who reside in the State of Michigan..." 6) "Michigan welfare agencies and decedent's Michigan creditors will have an interest in the financial circumstances of decedent's survivors;" and 7) "(B)oth of the defendants...are authorized to transact business in the State of Michigan and maintain registered agents in the State of Michigan,...one of the defendants maintains executive offices in the State of Michigan." (Plaintiff's brief, 10-12.)

I find plaintiff's argument unpersuasive. She applies an improper characterization of the subject matter. Under the criteria of the Restatement of the Law, Second, Conflicts of Laws, Michigan is the state with the least significant contacts with

this litigation for the purpose of applying the law of one of the three states in question. In the first place, the accident and resulting injury occurred in Indiana, not in Michigan. Second, as pleaded, the alleged misconduct involves the design and construction of a defective wheel by defendant Goodyear. There is no allegation that this defective wheel was manufactured in Michigan. Third, neither one of the defendant corporations is incorporated in or has its principal place of business in Michigan. Fourth, any other wrongful actions of the parties which resulted in decedent's death are not centered in Michigan, but in Indiana. Fifth, the State of Indiana has substantial interests in the occurrence which gave rise to the cause of action because of the need to apply its laws relating to strict liability in tort, Ind. Code Ann. Sec. 34-4-20A-3 (Burns), and to wrongful death, Ind. Code Ann. Sec. 34-1-1-2 (Burns).

Its interests involve the providing of relief for tortious acts visited upon persons within its borders as well as its own time limitations for bringing actions for such relief in order to prevent uncertainty from being visited upon persons using its highways, or involved in accidents caused by them. Eye witnesses would have to have been in Indiana at the time, and Indiana's police and its ambulances, hospitals and coroners would have to have been involved.

The Illinois wrongful death statute has a built-in time limitation of two years. The purpose of its requiring timely suit would be defeated if the Michigan wrongful death statute were applied merely to save this present action. The public policy of the forum should not be offended.

Michigan's being the state of domicile and residence of decedent's dependents and the state of the probate of his estate is insufficient to overcome the considerations in favor of

applying the law of Indiana. Even under Michigan law they bring an action for him which he cannot bring himself, and their authority to bring it and their benefits to be derived from bringing it are supplemental to and in aid of his claim against the defendants.

Defendant's motion to dismiss for plaintiff's failure to bring this action within the two year limitation of both Illinois and Indiana wrongful death acts should be and the same hereby is granted.

This case is dismissed.

E N T E R:

/s/ JAMES B. PARSONS

JAMES B. PARSON

United States District Court

DATED: 24 Nov 1981

11a

IN THE UNITED STATES DISTRICT COURT

Name of Presiding Judge, Honorable James B. Parsons

Date January 21, 1982

Cause No. 81 C 228

Title of Cause April Thompson, v. International Harvester Co., et al

Brief Statement order

Names and
Address of
moving counsel

Representing

Names and
Addresses of other
counsel entitled to
notice and names of
parties they represent.

Reserve space below for notations
by minute clerk

The Court having reconsidered its
Memorandum Opinion and Order of
November 24, 1981, for reasons set
forth by Defendant Goodyear in its
brief filed December 17, 1981 and
in particular pages 2, 3-4, 6, 8-10
thereof, The Court is of the same
opinion and directs that its Opinion
and Order of November 24, 1981, stand.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

(Argued June 9, 1982)

February 28 , 1983.

Before

Hon. HARLINGTON WOOD, JR., Circuit JudgeHon. JOHN L. COFFEY, Circuit JudgeHon. WILLIAM J. CAMPBELL, Senior District
Judge*

APRIL THOMPSON, Administratrix
of the Estate of DOYLE WAYNE
THOMPSON, Deceased,

Plaintiff-Appellant,
VS.

No. 82-1123

INTERNATIONAL HARVESTER COMPANY,
a corporation and THE GOODYEAR
TIRE & RUBBER COMPANY, a corpora-
tion,

Defendants-Appellees.

)
) Appeal
) from the
) United
) States
) District
) Court for
) the Northern
) District of
) Illinois,
) Eastern
) Division
) No. 81-C-228
) James B.
) Parsons,
) Judge.

O R D E R

This is an appeal from a dismissal of a wrongful death action brought in the Northern District of Illinois. The district judge dismissed the complaint on the rationale that

* The Honorable William J. Campbell, Senior District Judge of the Northern District of Illinois, is sitting by designation.

the two-year statute of limitations of either Illinois or Indiana applied and would bar the action. The plaintiff's position is that the three-year statute of limitations of Michigan should apply. Jurisdiction below was predicated on diversity of citizenship, 28 U.S.C. Sec. 1332, and jurisdiction for this appeal is based on 28 U.S.C. Sec. 1291.

The complaint alleged that Goodyear filed a motion to dismiss contending that it was apparent on the fact of the complaint that the two-year limitations period (under either Indiana or Illinois law) had expired. The plaintiff responded that under Ingersoll v. Klein, 46 Ill.2d 42, 262 N.E.2d 493 (1970), the appropriate analysis for determining the choice of law was the "most significant contracts" standard, see Restatement of the Law, 2d, Conflict of Laws Sec. 145 (1971); 1/ and that Michigan had the most significant contracts with the case so its three-year statute of limitations should apply. The district judge concluded that Michigan had the least significant contracts with the litigation and therefore the two-year limitations period of either Illinois or Indiana would apply and would bar the action. The plaintiff appeals the dismissal and maintains her position that 145 of the Restatement applies and requires the conclusion that the Michigan statute of limitations should apply.

1/ Section 145 provides, in pertinent part:

(1) The rights and liability of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties...

The parties agree that Illinois choice of law principles must be utilized in resolving this issue, see, Klaxon Company v. Stentor, 313 U.S. 487 (1941). The decedent was allegedly killed in a truck accident on January 25, 1978 caused by a defective tire manufactured by defendant Goodyear. International Harvester was also named as a defendant because it allegedly manufactured the truck. It is uncontested that the accident occurred in Indiana while the decedent was on a return part of a round-trip from Michigan to Illinois. There also appears to be no dispute that at the time of his death the decedent was a resident of Michigan and that the administration of his estate is proceeding there. The parties also agree that Illinois has adopted the conflict of laws principles as provided in the Restatement 2d. The dispute in this case turns on which section of the Restatement is applicable. The appellant argues that 145 is controlling, citing Ingersoll v. Klein, supra; Pancotto v. Sociedade DeSazaris' DeMozambique, 422 F.Supp. 405 (N.D. Ill. 1976); Leschkies v. Playboy Club of Lake Geneva, Inc., 465 F.Supp. 80 (N.D. Ill. 1979). The appellee contends that Sec. 142 of the Restatement applies.

Section 142 of Restatement of the Law, 2d, Conflict of Laws, provides:

- (1) An action will not be maintained if it is barred by the statute of limitations of the forum, including a provision borrowing the statute of limitations of another state.

- (2) An action will be maintained if it is not barred by the statute of limitations of the forum, even though it would be barred by the statute of limitations of another state, except as stated in Sec. 143.

This provision specifically addresses the choice of law issue presented in this case, but the appellant denies its applicability because the chapter of the Restatement 2d which includes it, Chapter 6, is entitled "Procedure." The appellant argues that since Illinois does not consider wrongful death limitations procedural, citing Wilson v. Tromly, 404 Ill. 307, 89 N.E.2d 22 (1949); Arnold Engineering Inc. v. Industrial Commission, 72 Ill.2d 161, 380 N.E.2d 782 (1978), Sec. 142 could not apply, and the general conflict of laws principle stated in Sec. 145 (which is Chapter 7) must be applied. However, in Sec. 122, also a part of Chapter 6, there is a discussion of the difficulties inherent "procedural-substantive" dichotomy which concludes as follows:

[T]he rules stated in this Chapter do not attempt to classify issues as "procedural" or "substantive." Instead they face directly the question whether the forum's rule should be applied. Restatement of Law, 2d, Conflict of Laws Sec. 122, Comment b.

Therefore, we do not believe that the title of Chapter 6 should control the application of Sec. 142.

Appellant also argues that Sec. 142 is not applicable because it does not incorporate the most significant relationship standard adopted by Illinois in Ingersoll v. Klein, supra. However, the Introductory Note to Chapter 6 states:

This Chapter deals with some of of the more significant issues as to which the state of the forum, merely because it is the state where the litigation is conducted, is the state of most significant relationship and hence the state of the applicable law. Later chapters in this Restatement deal with issues as to which some state other than the state of the forum may be the state of most significant relationship and hence the state of the applicable law. Restatement of the Law, 2d, Conflict of Laws, Chapter 6, pp. 349-350.

Thus, the rule of Sec. 142 is the result of the application of the most significant relationship test and is not inconsistent with the rationale of Sec. 145. The cases cited by the appellant do not alter this conclusion since they addressed issues other than statute of limitations, Ingersoll v. Klein, supra (elements of cause of action); Pancotto v. Sociedade DeSazaris DeMozambique, supra (standard of care); Leschkies v. Playboy Club of Lake Geneva, Inc., supra (standard of care).

Appellant also argues that Sec. 142 was not meant to apply to a forum litigation which bars the right and exists apart from the statute of limitations because:

The restatement did not intend to create an exception, Section 143, to a rule, Section 142, unless there was a difference in kind between the statutes. (Appellant's reply br. p. 3.)

This argument misconstrues the relationship of Sec. 142 and Sec. 143. Section 143 provides:

Foreign Statute of Limitations Barring the Right

An action will not be entertained in another state if it is barred in the state of the otherwise applicable law by a statute of limitations which bars the right and not merely the remedy.

This provision was only intended as an exception to Sec. 142(2), see Sec. 143 Comment a, and therefore does not reflect on Sec. 142(1) as appellant suggests.

Therefore, we conclude that Sec. 142 (1) of the Restatement 2d controls the issue in this case. Utilizing that provision, 2/ it is clear that the Illinois two-year statute of limitations, Ill. Rev. Stat. 1979 ch. 70 Sec. 2, applies. Since the allegations of the complaint indicate that the two-year period has expired the complaint must be dismissed. This dismissal, however, is without prejudice to the rights of any minor child of the decedent as provided in Ill. Rev. Stat. 1979 ch. 70, Sec. 2.

2/ We note that the appellant concedes that Illinois Borrowing Statute does not apply, Appellant's br. pp. 13-16.

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The district court is hereby affirmed.

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

August 31, 1983.

Before

Hon. HARLINGTON WOOD, JR., Circuit JudgeHon. JOHN L. COFFEY, Circuit JudgeHon. WILLIAM J. CAMPBELL, Senior District
Judge*

APRIL THOMPSON, Administratrix
of the Estate of DOYLE WAYNE
THOMPSON, Deceased,

Plaintiff-Appellant,
VS.

No. 82-1123

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) Appeal
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) James B.
) Parsons,
) Judge.

ORDER

On consideration of the petition for
rehearing filed in the above-entitled cause by
counsel for the plaintiff-appellant, all

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District Judge of the Northern District of
Illinois, is sitting by designation.

of the judges on the original panel having voted to deny the same,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.